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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/693,719
Filing Date: October 24, 2003
Appellant(s): SWARTS, DOUGLAS R.

Alan Heimlich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 17, 2009 appealing from the Office action mailed January 11, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

An Appeal Brief has been filed in related application SN 11/557,858.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,224,345 Dussault 5-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12 and 14-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Schoellhorn et al (US Patent No. 6,607,009).

Schoellhorn et al disclose a fluid transfer system comprising two tanks (12 and 10), an extendible and retractable hose (42) for transferring fluid, wherein said extendible and retractable hose has two ends, a first end (the end inside structure 30) in fluid communication with both tanks, and a second end (located about cover 54 is) having an attached nozzle (the nozzle is attached to the end of the hose (42), after removing the cover (54), the fluid can remove from the hose through the nozzle), said extendible and retractable hose extendible so the nozzle is capable of being in fluid communication with a receiving receptacle (see Col 4 lines 5-10), wherein said second end is extended and retraced in response to gas pressure inside of said extendible and retractable hose (see Col 3 lines 65 to Col 4 lines 27), wherein said fluid is a liquid (see black tank 10 and gray tank 12), wherein said system is located on a vehicle (see abstract), wherein said gas is air (see air tank 46), wherein said gas pressure is above local atmospheric pressure for extending said extendible and retractable hose (see Col 3 lines 65 to Col 4 lines 27, also note, the gas pressure MUST be above local atmospheric pressure for extending the hose), wherein said gas pressure is below local atmospheric pressure for retracting the hose (see Col 3 lines 65 to Col 4 lines 27), wherein the system further comprising a venting port (18), wherein said extendible and

retractable hose is a longitudinally extensible and compressible hose (figure 2 of Schoellhorn et al shows a compressible or flexible hose), wherein said gas pressure is supplied from a pressurized gas tank (46). Regarding claim 17, Schoellhorn et al shows the tank (46) is between an input port and output port (see figure 1) and the input port and output port are in communication with a one way valve (44 and 50), wherein said source of receiving air is an air compressor (see Col 3 lines 28-33), wherein the system further comprising a supporting member (30), and wherein said supporting member is a tube larger in diameter than diameter of said extendible and retractable hose and the supporting member is also a storage container for the hose. Regarding claim 23, the hose (42) may extend and retract without substantial resistance through the supporting member (30) and the hose when transferring the liquid waste has the second end at an equal or lower elevation than said first end (see figure 2).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schoellhorn et al (US Patent No. 6,607,009) in view of Dussault (US Patent No. 6,224,345).

Schoellhorn et al. disclose the below local atmospheric pressure is generated by a vacuum created by the vent pipe (18), however, Schoellhorn et al fail to disclose a venturi tube device to generate a vacuum.

Dussault discloses a venturi tube device to generate a vacuum (see figure 8). It would have obvious to one having ordinary skill in the art at the time the invention was made to have provided a venture tube device in arrangement with the Schoellhorn et al

system in order to provide a higher efficiency vacuum generator to generate a vacuum inside the system and require less energy consumption of the system.

(10) Response to Argument

Appellant argues for claims 1, 14, and 22 for the lack of a nozzle in the apparatus of Schoellhorn et al. However, it is the Examiner's position that the terminal end of the hose 42 of Schoellhorn et al, that is the last few inches, performs all of the functions of the instant nozzle and can be fairly read as a nozzle integrally attached to the hose. In particular, the only function disclosed for the instant nozzle is that it can be connected to a waste receiver and then discharge waste. The terminal end of hose 42 of Schoellhorn et al can be connected to a waste receiver and then discharge waste, which is true of any known RV waste disposal hose. Accordingly, the rejection is seen to be proper.

It is noted that under §102 the elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990), MPEP 2131, last paragraph.

Appellant argues for claim 13 for the same reasons as claim 1, which has been addressed above. Appellant further argues for claim 13 because a vacuum pump would be more efficient than a venturi. Such argument begs the question; both a venturi and a vacuum pump would more efficient than the apparatus of Schoellhorn et al. Schoellhorn et al teach using air pressure through vent pipe 18 to draw a vacuum in the hose and retract it, see Figure 3 and column 4, lines 11-28, which is quite similar to a venturi pump. Dussault teaches the well known improvement to such a system as

Art Unit: 3753

Schoellhorn et al of a venturi to create a higher degree of vacuum. Thus, the combination is suggested by the references themselves and would provide the predicted result of retracting the hose 42.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/John Fox/

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/Robin O. Evans/
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TC 3700 TQAS